

eries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 1388. Marine mammal cooperative agreements in Alaska

(a) In general

The Secretary may enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.

(b) Grants

Agreements entered into under this section may include grants to Alaska Native organizations for, among other purposes—

- (1) collecting and analyzing data on marine mammal populations;
- (2) monitoring the harvest of marine mammals for subsistence use;
- (3) participating in marine mammal research conducted by the Federal Government, States, academic institutions, and private organizations; and
- (4) developing marine mammal co-management structures with Federal and State agencies.

(c) Effect of jurisdiction

Nothing in this section is intended or shall be construed—

- (1) as authorizing any expansion or change in the respective jurisdiction of Federal, State, or tribal governments over fish and wildlife resources; or
- (2) as altering in any respect the existing political or legal status of Alaska Natives, or the governmental or jurisdictional status of Alaska Native communities or Alaska Native entities.

(d) Authorization of appropriations

There are authorized to be appropriated for the purposes of carrying out this section—

- (1) \$1,500,000 to the Secretary of Commerce for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999; and
- (2) \$1,000,000 to the Secretary of the Interior for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999.

The amounts authorized to be appropriated under this subsection are in addition to the amounts authorized to be appropriated under section 1384 of this title.

(Pub. L. 92-522, title I, §119, as added Pub. L. 103-238, §19, Apr. 30, 1994, 108 Stat. 559.)

§ 1389. Pacific Coast Task Force; Gulf of Maine

(a) Pinniped removal authority

Notwithstanding any other provision of this subchapter, the Secretary may permit the intentional lethal taking of pinnipeds in accordance with this section.

(b) Application

(1) A State may apply to the Secretary to authorize the intentional lethal taking of individ-

ually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stocks which—

(A) have been listed as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the Secretary finds are approaching threatened species or endangered species status (as those terms are defined in that Act); or

(C) migrate through the Ballard Locks at Seattle, Washington.

(2) Any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the taking.

(c) Actions in response to application

(1) Within 15 days of receiving an application, the Secretary shall determine whether the application has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force to address the situation described in the application. If the Secretary determines sufficient evidence has been provided, the Secretary shall establish a Pinniped-Fishery Interaction Task Force and publish a notice in the Federal Register requesting public comment on the application.

(2) A Pinniped-Fishery Interaction Task Force established under paragraph (1) shall consist of designated employees of the Department of Commerce, scientists who are knowledgeable about the pinniped interaction that the application addresses, representatives of affected conservation and fishing community organizations, Indian Treaty tribes, the States, and such other organizations as the Secretary deems appropriate.

(3) Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice under paragraph (1), the Pinniped-Fishery Interaction Task Force shall—

(A) recommend to the Secretary whether to approve or deny the proposed intentional lethal taking of the pinniped or pinnipeds, including along with the recommendation a description of the specific pinniped individual or individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and

(B) suggest nonlethal alternatives, if available and practicable, including a recommended course of action.

(4) Within 30 days after receipt of recommendations from the Pinniped-Fishery Interaction Task Force, the Secretary shall either approve or deny the application. If such application is approved, the Secretary shall immediately take steps to implement the intentional lethal taking, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

(5) After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted intentional lethal taking or alternative

actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.

(d) Considerations

In considering whether an application should be approved or denied, the Pinniped-Fishery Interaction Task Force and the Secretary shall consider—

- (1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;
- (2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;
- (3) the extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and
- (4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

(e) Limitation

The Secretary shall not approve the intentional lethal taking of any pinniped from a species or stock that is—

- (1) listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
- (2) depleted under this chapter; or
- (3) a strategic stock.

(f) California sea lions and Pacific harbor seals; investigation and report

(1) The Secretary shall engage in a scientific investigation to determine whether California sea lions and Pacific harbor seals—

- (A) are having a significant negative impact on the recovery of salmonid fishery stocks which have been listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or which the Secretary finds are approaching such endangered species or threatened species status; or
- (B) are having broader impacts on the coastal ecosystems of Washington, Oregon, and California.

The Secretary shall conclude this investigation and prepare a report on its results no later than October 1, 1995.

(2) Upon completion of the scientific investigation required under paragraph (1), the Secretary shall enter into discussions with the Pacific States Marine Fisheries Commission, on behalf of the States of Washington, Oregon, and California, for the purpose of addressing any issues or problems identified as a result of the scientific investigation, and to develop recommendations to address such issues or problems. Any recommendations resulting from such discussions shall be submitted, along with the report, to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(3) The Secretary shall make the report and the recommendations submitted under paragraph (2) available to the public for review and comment for a period of 90 days.

(4) There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the provisions of this subsection.

(5) The amounts appropriated under section 4107(c) of this title and allocated to the Pacific States Marine Fisheries Commission may be used by the Commission to participate in discussions with the Secretary under paragraph (2).

(g) Regionwide pinniped-fishery interaction study

(1) The Secretary may conduct a study, of not less than three high predation areas in anadromous fish migration corridors within the Northwest Region of the National Marine Fisheries Service, on the interaction between fish and pinnipeds. In conducting the study, the Secretary shall consult with other State and Federal agencies with expertise in pinniped-fishery interaction. The study shall evaluate—

- (A) fish behavior in the presence of predators generally;
- (B) holding times and passage rates of anadromous fish stocks in areas where such fish are vulnerable to predation;
- (C) whether additional facilities exist, or could be reasonably developed, that could improve escapement for anadromous fish; and
- (D) other issues the Secretary considers relevant.

(2) Subject to the availability of appropriations, the Secretary may, not later than 18 months after the commencement of the study under this subsection, transmit a report on the results of the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

(3) The study conducted under this subsection may not be used by the Secretary as a reason for delaying or deferring a determination or consideration under subsection (c) or (d) of this section.

(h) Gulf of Maine Task Force

The Secretary shall establish a Pinniped-Fishery Interaction Task Force to advise the Secretary on issues or problems regarding pinnipeds interacting in a dangerous or damaging manner with aquaculture resources in the Gulf of Maine. No later than 2 years from April 30, 1994, the Secretary shall after notice and opportunity for public comment submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing recommended available alternatives to mitigate such interactions.

(i) Requirements applicable to task forces

(1) Any task force established under this section—

- (A) shall to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests; and
- (B) shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(2) Meetings of any task force established under this section shall be open to the public, and prior notice of those meetings shall be given to the public by the task force in a timely fashion.

(j) Gulf of Maine harbor porpoise

(1) Nothing in section 1386 of this title shall prevent the Secretary from publishing a stock assessment for Gulf of Maine harbor porpoise in an expedited fashion.

(2) In developing and implementing a take reduction plan under section 1387 of this title for Gulf of Maine harbor porpoise, the Secretary shall consider all actions already taken to reduce incidental mortality and serious injury of such stock, and may, based on the recommendations of the take reduction team for such stock, modify the time period required for compliance with section 1387(f)(5)(A) of this title, but in no case may such modification extend the date of compliance beyond April 1, 1997.

(Pub. L. 92-522, title I, §120, as added Pub. L. 103-238, §23, Apr. 30, 1994, 108 Stat. 562.)

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsecs. (b)(1)(A), (B), (e)(1), and (f)(1)(A), is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified principally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (i)(B), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE
AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

SUBCHAPTER III—MARINE MAMMAL
COMMISSION

§ 1401. Establishment

(a) Designation

There is hereby established the Marine Mammal Commission (hereafter referred to in this subchapter as the “Commission”).

(b) Membership and term of office

(1) Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate. The President shall make his selection from a list of individuals knowledgeable in the fields of marine

ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation and the Chairman of the National Academy of Sciences. No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(2) The term of office for each member shall be three years; except that of the members initially appointed to the Commission, the term of one member shall be for one year, the term of one member shall be for two years, and the term of one member shall be for three years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed (A) shall be appointed for the remainder of such term, and (B) is eligible for reappointment for one full term. A member may serve after the expiration of his term until his successor has taken office.

(c) Chairman

The President shall designate a Chairman of the Commission (hereafter referred to in this subchapter as the “Chairman”) from among its members.

(d) Compensation; reimbursement for travel expenses

Members of the Commission shall each be compensated at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of title 5, for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(e) Executive Director

The Commission shall have an Executive Director, who shall be appointed (without regard to the provisions of title 5 governing appointments in the competitive service) by the Chairman with the approval of the Commission and shall be paid at a rate not in excess of the rate for GS-18 of the General Schedule under section 5332 of title 5. The Executive Director shall have such duties as the Chairman may assign.

(Pub. L. 92-522, title II, §201, Oct. 21, 1972, 86 Stat. 1043; Pub. L. 97-389, title II, §202, Dec. 29, 1982, 96 Stat. 1951; Pub. L. 98-364, title I, §103(a), July 17, 1984, 98 Stat. 441.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-364 substituted “The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of